

ORDINANCE NO. 48-982 132019

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, GRANTING TO KANSAS FIBER NETWORK, L.L.C., A KANSAS LIMITED LIABILITY COMPANY, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER, A CONTRACT FRANCHISE FOR THE PROVIDING OF LOCAL EXCHANGE SERVICE IN THE CITY OF WICHITA; PRESCRIBING THE TERMS OF SAID GRANT AND OTHER CONDITIONS RELATING THERETO.

SECTION 1. Definitions. For the purposes of this contract franchise ordinance, the following words and phrases shall have the following meanings:

(1) "Communications system" or "System" means the cables, wires, lines, optic fiber, and any associated converters, equipment, or other facilities designed, constructed or occupied by a Provider or others for the purpose of producing, receiving, amplifying or distributing Telecommunications Service to or from locations within the City.

(2) "City" means the City of Wichita, Kansas, the franchisor herein.

(3) "Facilities" means any portion of a System located in, along, over, upon, under, or through the Public Right-of-Way.

(4) "Franchise fee" means the Access Line Fee or fee on Gross Receipts established under this ordinance.

(5) "Gross receipts" means only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service

revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, non-regulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses.

Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before January 1, 2011, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the City.

(6) "Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

(7) "Provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

(8) "Public right-of-way" means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(9) "Kansas Fiber Network, L.L.C." or "Company", means the franchisee herein.

(10) "Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

(11) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. Intent. It is understood and agreed that the intent of Kansas Fiber Network, L.L.C., is to provide telecommunication services to retail customers within the corporate boundaries of the City. In the event Kansas Fiber Network, L.L.C., does not provide such service and does not generate gross receipts, Kansas Fiber Network, L.L.C., forfeits its contract franchise and the contract franchise ordinance is terminated.

SECTION 3. Grant. (a) This contract franchise ordinance hereby grants to Kansas Fiber Network, L.L.C., a Telecommunications Local Exchange Service Provider providing Local Exchange Service within the City, the non-exclusive contract, right, privilege, and franchise to construct, maintain, and operate Facilities along, across, upon and under the Public Right-of-way for the purpose of providing telecommunications services to retail customers within the City.

(b) This contract franchise ordinance shall not convey title, equitable or legal, in the Public Right-of-Way, and gives only the right to occupy Public Right-of-Way, for the purposes and for the period stated herein.

(c) This contract franchise ordinance does not provide Kansas Fiber Network, L.L.C., the right to provide "Cable Service" to the City and inhabitants thereof. For purposes of this ordinance, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service; but "Cable Service" does not include point to point, point to multi-point, and switched video services, or similar services that Kansas Fiber Network, L.L.C., has offered or may in the future offer. Nothing in this contract franchise ordinance is intended to preclude the City from seeking, or authorize the City to seek, a franchise from any subsidiary, affiliate, or third party providing "Cable Services." Kansas Fiber Network, L.L.C., and City agree that nothing in this franchise is intended to authorize the City to seek from Kansas Fiber Network, L.L.C. nor to require Kansas Fiber Network, L.L.C. to obtain a franchise to offer "Open Video Systems" as that term is used in section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). Kansas Fiber Network, L.L.C., and City further agree, however, that this ordinance does not authorize Kansas Fiber Network, L.L.C. to offer "Open Video Systems" without paying a franchise fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573(c)(2)(b) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. 573.

SECTION 4. Term. (a) This contract franchise ordinance shall be effective for a term of three (3) years from the effective date of this contract franchise ordinance. Thereafter, this contract franchise ordinance will renew for three (3) additional three (3) year term, unless either party notifies the other party of its intent to terminate the contract franchise ordinance prior to one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

(b) Upon written request of either the City or Kansas Fiber Network, L.L.C., this contract franchise ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001, as amended, upon any of the following events: Changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Kansas Fiber Network, L.L.C., including but not limited to the scope of the contract franchise ordinance granted to the Kansas Fiber Network, L.L.C. or the compensation to be received by the City hereunder.

(c) Amendments under this Section, if any, shall be made by contract ordinance as prescribed by statute. The contract franchise ordinance shall remain in effect according to its terms pending completion of any review or renegotiation provided by this section.

SECTION 5. Compensation. (a) In consideration of this contract franchise ordinance, Kansas Fiber Network, L.L.C. agrees to remit to the City a franchise fee of five percent (5%) of Gross Receipts.

To determine the Franchise Fee, Kansas Fiber Network, L.L.C. shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to 5% of Gross Receipts.

(b) Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (1) and (m), as amended, may elect to adopt an increased gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, as amended, or may choose to decline all or any portion of any increase in the access line fee.

(c) The Franchise Fee shall be due and payable on a monthly basis within thirty (30) calendar days after the end of the remittal period. If any Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

(d) Franchise Fee payments shall be accompanied by a 9K2 (gross receipts) statement showing the manner in which the Franchise Fee was calculated on a quarterly basis. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, as amended.

(e) The City or its designated representatives shall have the right to examine, upon written notice to Kansas Fiber Network, L.L.C. no more often than once per calendar year, those records necessary to verify the correctness of the Franchise Fees.

(f) Within sixty (60) days of the effective date of this contract franchise ordinance, Kansas Fiber Network, L.L.C. shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this contract franchise ordinance. Kansas Fiber Network, L.L.C. shall additionally pay the publications costs of this ordinance.

(g) The Franchise Fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, as amended. The Franchise Fee is compensation for use of the Public Right-of-Way and shall in no way be deemed a tax of any kind.

SECTION 6. Use of Public Right-of-Way. (a) Pursuant to K.S.A. 17-1902, as amended, Kansas Fiber Network, L.L.C. shall have the right to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under the Public Right-of-Way. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(b) Nothing in this contract franchise ordinance shall be interpreted as granting Kansas Fiber Network, L.L.C. the authority to construct, maintain or operate any facility or related appurtenance on property owned by the City outside of the Public Right-of-Way.

(c) The authority of Kansas Fiber Network, L.L.C. to use and occupy the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Right-of-Way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.

(d) The City shall have the authority to prohibit the use or occupation of a specific portion of Public Right-of-way subject to the procedures of K.S.A. 17-1902, as amended.

(e) If there is an emergency necessitating response work or repair, Kansas Fiber Network, LLC may begin that repair or emergency response work or take any action required under the circumstances, provided that Kansas Fiber Network, L.L.C. notifies the City promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

(f) Kansas Fiber Network, L.L.C. shall repair all damage to the Public Right-of-Way caused by the activities of Kansas Fiber Network, L.L.C., or of any agent affiliate, employee, or subcontractor of Kansas Fiber Network, L.L.C., while occupying, installing, repairing or maintaining facilities in a Public Right-of-way and to return the Public Right-of-Way to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If Kansas Fiber Network, L.L.C. fails to make the repairs required by the City, the City may affect those repairs and charge Kansas Fiber Network, L.L.C. the cost of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have the remedies provided in K.S.A. 17-1902, as amended.

(g) When requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, Kansas Fiber Network, L.L.C. promptly shall remove its facilities from the Public Right-of-way or shall relocate or adjust its facilities within the Public Right-of-way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Kansas Fiber Network, L.L.C. failure to timely relocate or adjust its facilities shall be borne by Kansas Fiber Network, L.L.C.

(h) Kansas Fiber Network, L.L.C. shall coordinate the placement of its Facilities in Public Right-of-Way in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

(i) In granting this contract franchise ordinance the City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of the Public Right-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Kansas Fiber Network, L.L.C.

(j) Except as may otherwise be provided by other applicable ordinances of the City, where reasonable and appropriate and where adequate Public Right-of-Way exist; Kansas Fiber Network, L.L.C. shall place above-ground Facilities underground in conjunction with City capital improvement projects

and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible.

(k) When Kansas Fiber Network, L.L.C. is allowed to place Facilities above ground under this section, Kansas Fiber Network, L.L.C. may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall a Franchisee erect a new pole within an existing aerial pole line absent the City's prior authorization. Above-ground pedestals, vaults, or other above-ground Facilities, may be installed only if approved by the City where alternative underground facilities are not feasible or where underground requirements are otherwise waived pursuant to this Section, and shall generally be located behind the sidewalk where feasible and shall be screened from public view. Facilities in rear lot easements shall be exempt from the screening requirements except when they are within fifty feet of a street or highway. The underground requirements of this subsection shall not apply to the maintenance and repair of existing Facilities, as determined by the City Engineer.

(l) Kansas Fiber Network, L.L.C. shall take all reasonable measures necessary to maintain accurate as completed records in electronic format, of all Facilities constructed, reconstructed, or relocated in the Public Right-of-Way of arterial streets (as designated by City of Wichita Code §11.96.100) after the date hereof. Such Facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change. All points of Facilities shall be horizontally located from street centerline, or section or quarter section lines or corners. Vertical locations on all points of Facilities shall consist of elevations in either City datum or United States Geological Survey datum. Kansas Fiber Network, L.L.C. shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its Facilities located within Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be at the sole expense of Kansas Fiber Network, L.L.C. without expense to the City, its employees, agents, or authorized contractors.

SECTION 7. Indemnity and Hold Harmless. (a) It shall be the responsibility of Kansas Fiber Network, L.L.C. to take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Kansas Fiber Network, L.L.C. fails to accurately or timely locate Facilities when requested, it has no claim for costs or damages against the City and its authorized contractors unless such party is responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Kansas Fiber Network, L.L.C. Facilities.

(b) Kansas Fiber Network, L.L.C. shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action,

liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a Public Right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Kansas Fiber Network, L.L.C., and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Kansas Fiber Network, L.L.C., and does not create or grant any rights, contractual or otherwise, to any other person or entity. Kansas Fiber Network, L.L.C. or the City shall promptly advise the other in writing of any known claim or demand against Kansas Fiber Network, L.L.C. or the City related to or arising out of the Kansas Fiber Network, L.L.C. activities in a Public Right-of-way.

SECTION 8. Insurance Requirement and Performance Bond. (a) During the term of this Franchise, Kansas Fiber Network, L.L.C shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Kansas Fiber Network, L.L.C. elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Kansas Fiber Network, L.L.C. shall provide not less than the following insurance:

(1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Kansas Fiber Network, L.L.C. operations under this ordinance.

(b) As an alternative to the requirements of subsection (a), Kansas Fiber Network, L.L.C. may demonstrate to the satisfaction of the City that it is self-insured and as such Kansas Fiber Network, L.L.C. has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Kansas Fiber Network, L.L.C., or alleged to so have been caused or occurred.

(c) Kansas Fiber Network, L.L.C. shall, as a material condition of this Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Kansas Fiber Network, L.L.C. shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(d) Kansas Fiber Network, L.L.C. shall, as a material condition of this Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of one hundred thousand dollars (\$100, 000,) payable to the City to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the right-of-way. Said bond shall be maintained in full force and effect for the term of such franchise and any renewal thereof. In the event Kansas Fiber Network, L.L.C. fails within a reasonable time after notice that it is not in compliance with one or more of the provisions of this franchise issued to it, the City shall recover, jointly and severally from the principal and surety of such bond, any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of Kansas Fiber Network, L.L.C. as prescribed hereby which may be in default, plus a reasonable allowance for attorney's fees and costs up to the full amount of the bond. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION 9. Non-discrimination. Kansas Fiber Network, L.L.C. will not, on the grounds of race, color, sex, religion, national origin, ancestry, disability, or age, discriminate or permit discrimination against any person in the use of the Public Right-of-Way or in activities under this Franchise.

SECTION 10. Transfer and Assignment. This Franchise shall be assignable in accordance with the laws of the State of Kansas. Kansas Fiber Network, L.L.C. shall provide the City written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information.

SECTION 11. Expiration or Termination of Contract Franchise Ordinance. Upon expiration of this contract franchise ordinance, whether by lapse of time, by agreement between Kansas Fiber Network, L.L.C. and City, or by forfeiture thereof, Kansas Fiber Network, L.L.C. shall have the right to remove any and all of its Facilities within a reasonable time after such expiration or termination or to transfer any and all of its Facilities to another entity authorized to place Facilities in the Public Right-of-Way. It shall be the duty of the Company, immediately upon any such removal, to restore the Public Right-of-Way from

which said Facilities are removed to as good a condition as the same were before said removal was effected.

SECTION 12. Notices. Except in emergencies, all notices by either the City or the Company to the other shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day.

"Business day" for purposes of this section shall mean Monday through Friday, City and Kansas Fiber Network, L.L.C. observed holidays excepted. Emergency notices shall be provided by telephone, with written notice immediately following by facsimile.

Notices shall be addressed to the City as follows:

City Clerk

455 N. Main Street

Wichita, Kansas 67202-1635

Notice to Kansas Fiber Network, L.L.C. shall be addressed to the Company as follows:

Kansas Fiber Network, L.L.C.

Attn: Steven Dorf, President and General Manager

121 N. Mead, Suite 200

Wichita, KS 67202

Notice shall be given as required by the terms of this contract franchise ordinance. Notice shall be provided to the above-named addressees unless directed otherwise in writing by City or Kansas Fiber Network, L.L.C. Both Kansas Fiber Network, L.L.C. and the City shall provide to the other contract information with telephone and facsimile number for use in emergencies.

SECTION 13. Confidentiality. Information provided to the City by Kansas Fiber Network, L.L.C. under K.S.A. 12-2001 and/or this contract franchise ordinance shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. In the event the City is required by law to disclose such information, the City shall provide Kansas Fiber Network, L.L.C. ten (10) days advance notice of its intent to disclose such information and shall take such action as may be reasonably necessary to cooperate with Kansas Fiber Network, L.L.C. to safeguard such information. Kansas Fiber Network, L.L.C. agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Kansas Fiber Network, L.L.C., or of the City at the written request of Kansas Fiber Network, L.L.C., in seeking to safeguard the confidentiality of information provided by Kansas Fiber Network, L.L.C. to the City under this contract franchise ordinance.

SECTION 14. Conditions of Franchise. This contract franchise ordinance is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, including all permit requirements, fee payments, and all other City codes and ordinances in effect as of the date of this Ordinance or hereinafter adopted to the extent not in contravention of state or federal law. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond Kansas Fiber Network, L.L.C. or the City's control.

SECTION 15. Acceptance. Prior to the effective date of this ordinance Kansas Fiber Network, L.L.C. shall file with the City Clerk of the City of Wichita its acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths. When so accepted the ordinance and acceptance shall constitute a contract between the City and Kansas Fiber Network, L.L.C. subject to the provisions of the laws of the state of Kansas.

SECTION 16. Reservation of Rights. (a) The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the rendering of efficient Telecommunications Service at reasonable rates, and the maintenance of the Company's property in good repair.

(b) In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City. (c) In granting its consent hereunder, Kansas Fiber Network, L.L.C. does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 17. Failure to Enforce. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this contract franchise ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18. Severability. If any clause, sentence, or section of this contract franchise

ordinance, or any portion thereof, shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid; provided, however, the City or Kansas Fiber Network, L.L.C. may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the City or Kansas Fiber Network, L.L.C., an essential part of this contract franchise ordinance.

SECTION 19. Governing Law and Venue. (a) The contract franchise ordinance and the rights herein granted are subject to the provisions of existing federal and state laws and those hereafter enacted pertaining to the granting of franchises.

(b) The obligations and undertakings of both parties hereto shall be performed at Wichita, Sedgwick County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in State or Federal courts, as appropriate, having jurisdiction for Sedgwick County, Kansas.

SECTION 20. Effective Date of Ordinance. This contract franchise ordinance shall be effective April 15, 2011, upon its final passage and publication once in the official City paper.

PASSED AND APPROVED by the governing body of Wichita, Kansas, this date April 12, 2011.

ATTEST:

CARL BREWER

Mayor

KAREN SUBLETT

City Clerk

APPROVED AS TO FORM:

GARY E. REBENSTORF

Director of Law